



City of Tigard Tigard Workshop Meeting – Minutes

Agenda Item No. 3.A.1

Meeting of February 22, 2011

TIGARD CITY COUNCIL

MEETING DATE AND TIME: November 16, 2010 - 6:30 p.m.

MEETING LOCATION: City of Tigard - Town Hall - 13125 SW Hall Blvd.,

1. WORKSHOP MEETING

A. Mayor Dirksen called the Council Workshop meeting to order at 6:35 p.m.

B. Roll Call

	Present	Absent
Councilor Henderson	X	
Councilor Webb		X
Council President Wilson	X	
Councilor Buehner	X	
Mayor Dirksen	X	

C. Pledge of Allegiance

D. Council Communications & Liaison Reports – None

E. Call to Council and Staff for Non-Agenda Items - City Manager Prosser said that the City Attorney RFP process and schedule would be discussed at the end of the meeting. He said there will also be a discussion on recognizing outgoing Councilor Webb whose term expires at the end of December 2010.

2. ~~JOINT MEETING WITH TREE BOARD~~ Due to scheduling conflicts with the Tree Board members, this joint meeting is postponed until the December 21, 2010 Council Workshop meeting.

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3. UPDATE ON TUALATIN VALLEY CABLE TELEVISION (TVCTV)

Information Technology Manager Sears introduced this item. He said TVCTV recently lost their leased space with the Beaverton School District. The Metropolitan Area Communications Commission (MACC) and TVCTV have consolidated their offices in a new building but paying for space now affects the TVCTV and MACC budgets.

Councilor Henderson gave Council some background on negotiations he participated in as the City's MACC Commissioner. Discussions were held on what services TVCTV could reduce. He said it was hard to make cuts, but keeping services the same was not sustainable. He said Tigard partnered with Beaverton and Tualatin in support of public education and government programming. He said the stage area is lost but the public can still get their programs on cable access.

Information Technology Manager Sears noted that of five options presented to the MACC Commissioners, Options 2 and 3 (attached to Council's staff report) were the final proposals. He said Option 3 was adopted after receiving a lot of public input.

In response to a question from Mayor Dirksen, Councilor Henderson said TVCTV will be located in a warehouse near MACC and has the ability to build out in the future, possibly bringing back the studio setting. Councilor Henderson thanked Information Technology Manager Sears for his assistance. Mayor Dirksen acknowledged their effort to come up with a workable compromise.

4. DISCUSS CHANGES TO LAND USE DECISION MAKING PROCESS TO BE IMPLEMENTED JANUARY 1, 2011

Assistant Community Development Director Hartnett introduced this item which focuses on land-use processes rather than procedures (which are specified in the Development Code). The regulations in the Development Code give steps and tasks associated with decisions necessary to meet the minimum land-use decision making requirements under the law. She said these provisions do not provide the needed details to make sure the City is following best practices. She put this proposal in context by saying it is the work that needs to be done to implement and be consistent with the Comprehensive Plan.

Assistant Community Development Director Hartnett read the process goals:

- Modify the procedures and processes followed by City staff, Planning Commission and Council in land-use decisions to improve opportunities for public input, enhance the quality of findings and conditions of approval, and assure the greatest chance of sustained decisions in the event of an appeal to LUBA.

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- Assure that procedures and processes are clearly understood by all participants through training, written materials, and Development Code amendments.
- Clarify land-use review requirements and approval criteria as needed.

She said meeting the goals will take a lot of interrelated activity which begins with Council review tonight. Community Development and Public Works staff training will start in December and will include discussions on this process and how to write findings and conditions of approval. This training is being developed by Assistant Community Development Director Hartnett and City Attorney Ramis. A discussion similar to this one with Council has been scheduled with the Planning Commission. The next package of regulatory improvement initiatives and Development Code amendments is expected to focus on land-use decision making components.

Assistant Community Development Director Hartnett said land-use decision making is a complex process but has four main phases:

- Proposal
- Recommendation
- Decision
- Post-Adoption

She referred to Attachment 1 in the Council Packet. Major activities and work products of each phase were discussed. She said the proposed changes are most directly applicable to legislative land-use decisions and some apply to quasi-judicial land-use decisions. She spoke briefly about specific changes, summarized on the last page of Attachment 2.

She said, “Council, in its legislative role will get a lot of deference when something is taken to LUBA. But the only way we can achieve that is if your thoughts and what persuaded you are contained in the findings. Otherwise, you get no deference.”

Assistant Community Development Director Hartnett said one big change is that prior to the public hearing, the decision-making body (Council or Planning Commission) focus should be on understanding the factual aspects of the proposal or recommendation (laws, regulations, approval criteria, public outreach and responses received, etc.) It is really not geared towards presenting or discussing desired changes or amendments. The opportunity to propose changes should come during the public hearing process. She said it needs to be in a public setting so they can hear what is on your minds and be able to comment if they wish. It is also critical that once all the information is on the table and the decision-making body needs more time for discussion, a workshop be scheduled. She said that is the appropriate stage for additional discussion; not before you’ve heard from the public. She asked Council to keep in mind that if there are critical amendments, an opportunity for additional public testimony should be allowed. She said the final decision making may need to be set over to a future meeting so proposed amendments or issues raised can be addressed formally or if findings need modification. She said Tigard always has a City Attorney present, when Council is in the decision-making phase, who can help determine if the findings need to be amended. She asked for Council’s comments.

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Councilor Buehner said she was pleased about getting more detail to Council from the Planning Commission. She said Council hears few quasi-judicial hearings so they may not have context of what was raised at Planning Commission hearings unless more information is given. She expressed concerns about suggested change 2.4. Many questions and suggestions come up during Council Workshop presentations; waiting until a public hearing is not as useful for Council because it is a more constrained environment, making it difficult for Council to ask very many questions. She said she wants a better handle on things before the public hearing so focus can be on what the public feels about the final product.

Council President Wilson said he agreed with some of those comments, and said, “Sometimes I already feel that Council is so high up the food chain that by the time it gets to us, we are sort of rubber stamping things. I want to be engaged and involved from the beginning.” He said public testimony doesn’t entirely inform Council on how to make a decision.

Councilor Henderson asked for clarification on the schedule for Council approval and staff training for this process. Assistant Community Development Director Hartnett said staff training is scheduled to start in December but if there are concerns tonight, implementation can be delayed. He asked if she thought the system was broken and needed to be fixed. She replied, “I don’t think it’s broken but in my opinion we are not following best practices.” She said the City Attorney said the proposed process is the way it used to be done and he is recommending we return to it.

Assistant Community Development Director Hartnett said a concern is that the more time Council or the Planning Commission spends directing staff to make changes to a proposal before the public has had an opportunity to comment on the initial proposal or recommendation, the more we are denying the tenets of Goal 1, which is to provide an opportunity for the public to influence decision making. She referred to an earlier comment by Councilor Buehner that she wanted the public’s comment on the final document. Assistant Community Development Director Hartnett said that waiting to get the public’s opinion on the final document is counter to Goal 1 which says we are looking for input throughout the process. She said this was also at the crux of the City Attorney’s concerns.

Councilor Buehner said she understands the City Attorney’s concerns but respectfully disagrees. She said the proposed process creates confusion for the public. She said she is, “very interested in what the public has to say through Planning Commission hearing testimony, written testimony, staff contact, etc. But they have to understand what they are looking at. If Council needs help understanding it, how is the public going to understand?” She said she doesn’t want to have a discussion about various proposals with staff or the City Attorney during a public hearing.

Assistant Community Development Director Hartnett said there is a difference between understanding it and having an opportunity to give input on things you’d like to see changed.

Mayor Dirksen said he agrees with his fellow Councilors but for a different reason. He said in looking back at the legislative process, Council is the legislative body, so theoretically changes would come from them. But there is no place for input until it has gone through the public process. When

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it goes through the public process they will assume Council came up with it, but what the public is looking at Council actually had nothing to do with.

Assistant Community Development Director Hartnett replied that one of the things the Planning Commission transmittal memo does is to make it clear that what Council is considering is the Planning Commission's recommendation. Council will take public testimony on it and consider whether the testimony influenced or convinced them that changes were needed. Mayor Dirksen said he didn't think this is staff's intent, but it sounds like they don't want Council to have an opportunity to initiate legislative changes. Councilor Buehner agreed.

City Manager Prosser responded that this was "absolutely not the intent." He expressed concern that in the findings stage, "We are trying to write findings 'on the fly' to justify decisions and changes. But this is something we need to be more careful and deliberative about." He said a lot of it is perception – by the time we get to the public hearing, if the proposal as it came out of the Planning Commission has been changed, it looks to the public that they were cut out of the process. We are drawing lines to create a process that helps bring the public along.

Mayor Dirksen said he was talking about something that goes on before it gets to the Planning Commission recommendation stage. He said he didn't see any Council input in the Proposal stage. Assistant Community Development Director Hartnett said that can easily be changed. She said it is not listed in Attachment 1, but the Planning Commission and Council will receive briefings all along.

Council President Wilson said he supports giving the public the opportunity to give testimony on the specific proposal. But the problem is that this needs to be an iterative process rather than a linear one. He suggested running the big picture/concept by the Council (decision makers) to make sure it is generally what they want, hone in, run it by Council again, and then put it into this linear process.

Councilor Buehner said Council sometimes is not aware of things until the day of a workshop meeting. She gave the Transportation Plan as an example. She said she found the Council briefings insufficient and had she not gone to the Planning Commission workshop and hearing, she would have felt totally unprepared to make a decision at the Council meeting. She said it is her perception that between the times something goes before the Planning Commission and when they make a decision, staff is choosing what materials from the Planning Commission will come to the Council. She asked, "Are you planning to have the transmittal memo approved by the Planning Commission before it comes to us? That is a critical piece." She said she was very concerned that Council is not getting enough information to know what the Planning Commission meant.

Councilor Buehner suggested the City do better outreach to smaller groups within the community. Generic calls to the public to come to City Hall might be intimidating to people. Meeting with neighborhood or special interest groups may bring out segments of the public who don't feel invested in the community. She also suggested that when workshops on a particular issue are scheduled, we do a better job of telling the public what will be discussed.

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Community Development Director Bunch said his experiences at other jurisdictions have shown him the importance of preventing cases from going to LUBA by having good processes and standards in place. He said the City needs time to develop failsafe findings. Decisions cannot be made outside the process. He mentioned a specific Tigard situation where the Homebuilders Association appeal of the tree policies tied it up for two years. He said a good process has efficiency, money savings, and prevents legal problems.

Councilor Buehner clarified that she didn't hear anyone on Council questioning post-hearing finding amendments. She said Council is on board on that issue. Community Development Director Bunch said he was glad to hear that as it is the basis of the process. He reiterated that Council members are the legislators who initiate legislative changes and staff is here to make sure everything that comes forward is effective.

Councilor Henderson if there is training to be done, he wants to be involved. Assistant Community Development Director said what City Attorney Ramis will be covering is what the consequences are when writing findings a certain way.

Councilor Buehner said in her experience as a hearing officer she found it difficult to write findings during the hearings. She suggested a Council workshop on the do's and don'ts of writing findings.

City Manager Prosser said staff training would proceed but didn't feel the detailed and technical nature of the training was appropriate for Council. He suggested that staff develop a series of "Land Use 101" sessions for Council members, which would address Councilor Henderson's desire for training and Councilor Buehner's focus on developing findings. He said do's and don'ts of writing findings could be an item for a Council workshop session, not so much to teach how to write them, but to explain consequence of not doing them correctly.

Council President Wilson said recommendations at decision points have legal ramifications. He said the intent of public hearings is to listen to public comments and to respond to them. He said, "By the time we get to the decision stage our wordsmithing should have been done. Council should have blessed it at the proposal stage." He said if that is the case, there are many details left out of the proposal section in Attachment 1."

City Manager Prosser said the intent was not to reduce the Council input and was surprised that Councilor Buehner felt Council was hearing about things for the first time at their Workshop meetings. He said staff tries to keep Council informed of things along the way. He asked, "If we spent a lot of time in the proposal stage with Council wordsmithing, what is the role of the Planning Commission?"

Mayor Dirksen agreed but said that during the proposal process it may go back and forth from Council to staff first and then the Planning Commission. Council and the Planning Commission need a chance to work on it first, before public hearings.

Assistant Community Development Director Hartnett said City Attorney Ramis will attend the next discussion. There can be detrimental financial outcomes if a decision is not backed up with findings.

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Councilor Buehner said her experience is that Council only gets a 15-20 minute Workshop presentation on an issue, yet the Planning Commission gets one-half hour to an hour. She advocates more joint Council/Planning Commission workshops on proposed legislation, which would save staff having to do the same presentation twice. Mayor Dirksen said staff could look into that but the scheduling may not always be possible.

Mayor Dirksen commented that the problem is that Council wants to be involved up front in the Proposal stage. He said he disagreed with the suggestion that the Planning Commission doesn't get to make any changes before it goes to the first public hearing. He said they should be able to fine tune it beforehand.

Community Development Director Bunch we are all committed to meaningful engagement with the public. The Planning Commission makes recommendations to the Council. Council formulates legislation and provides policy direction, but ultimately, the public informs. This is a participatory process where citizens have process rights they can exercise. He said upcoming planning issues are going to be more complex and we need a process that is failsafe. He said he would take Council's comments from tonight, look at the due process elements and put together another proposal that includes more Council briefings and opportunities to be engaged and ensures that citizens are part of this. The City Attorney will be involved to make sure it is legally sound.

5. **DISCUSS WITH OREGON DEPARTMENT OF TRANSPORTATION REGION 1
DIRECTOR JASON TELL UPCOMING AND ONGOING PLANNING AND
CONSTRUCTION OF ODOT/TIGARD PROJECTS**

Mayor Dirksen welcomed ODOT Region 1 Director Jason Tell. Region Director Tell introduced Area Manager David Kim who works closely with staff on projects in the Tigard. He said a series of good things came together on Pacific Highway because of Tigard's Council and their good partnership with ODOT, including the \$600,000 signal optimization project and the intersection improvements at Hall and Greenburg, for which ODOT provided \$6 million. He noted that ODOT is putting together their 2014 budget and there is no money available for modernization. He said they have \$4 million for an engineering study of the Gaarde and McDonald intersection. They are hopeful that a federal reauthorization bill could fund construction. He commented that Tigard's leadership has resulted in tangible improvements for the citizens of Tigard. He noted that Mayor Dirksen is a member of JPACT and the partnership between Tigard and ODOT is at an all-time high and he wants to keep that going.

Mayor Dirksen asked Mr. Tell for his comments on the draft Guiding Principles document. Region Director Tell said he agreed with all of the principles, but there might need to be some wording clarifications. He said he discuss this with his staff and will get back to City staff later this week. He said ODOT would work with the City to strike a balance between the use of the Pacific Highway for mobility purposes and land use desires, with multi-modal options and to create communities the way you want.

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Region Director Tell said the top priority of the Regional Transportation Plan is to look at high capacity transit in this region. He said Tigard has the foundation and forums are coming up for more discussion on Tigard's specific needs. Trade-offs will be weighed in the decision-making process. Councilor Buehner commented that one requirement of Tigard's involvement in the high-capacity transit process is to have a local citizen committee; Tigard has appointed the Transportation Committee. She noted that there are two ODOT employees on the City's citizen committee.

Region Director Tell said Tigard's Council has stepped up and has put a lot of focus towards high capacity transit. He said ODOT needs to match that intensity and engagement with a higher level of communication.

Council President Wilson said he is thrilled about the momentum of projects along Pacific Highway. He said the Transportation Planning Rule is the most urgent issue to him. He said Tigard has opportunities to adjust the downtown density but is bumping up against the TPR. He suggested that ODOT's calculation change to take into account a more efficient use of land. He noted that the League of Oregon Cities has identified this as a priority, and said "We all have the same goal."

City Manager Prosser asked Region Director Tell, "When we run into access management or other issues, what is the best way to approach ODOT about these roadblocks and work together?" Region Director Tell proposed that he and Area Manager Kim assemble a list of primary ODOT staff contacts for City staff to connect with on particular issues. Tigard could also create list for ODOT so everyone knows who the primary contacts are. He said if both sides are meeting on an issue and not coming to a resolution, then the issue can brought to the next level.

Mayor Dirksen said there have been recent proposals that local jurisdictions be given authority over state highways that are within cities. He said if this were to happen, Tigard would get everything – Pacific Highway and Hall Boulevard. He asked ODOT Region Director Tell for his comments. In response, Region Director Tell said he was not a big fan of piecemeal approaches. He said a better example is the current conversation being held around Highway 43, which ODOT is considering transferring to different jurisdictions. He said this makes sense to him because although the highway is a high mobility route, it is not a major freight route, and future use is focused on other modes besides automobiles. He said if a road's focus changes and there is agreement of the other jurisdictions he would support it. He said there must be mutual agreement. He said he would first ask someone who was considering this to see how far they could get stretching the existing rules, before taking the drastic step of shifting responsibility. After that has been done and there still dissatisfaction, the local government and ODOT could have that conversation. Mayor Dirksen referred to Region Director Tell's description of Highway 43 and said "You could substitute Hall Boulevard for it and have the same discussion. And we need to have that talk." Region Director Tell said his staff is working on that right now and concepts will be coming forward.

Councilor Buehner said the City is working on long-term planning for streets around the Pacific Highway viaduct and needs to know the future plans for that bridge. She asked Region Director Tell if a replacement or modification is planned. City Manager Prosser said he remembered that the viaduct replacement project appeared on a list at one time but then it was changed to deck

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replacement. Council President Wilson said it was an OTIA project but the expense of rerouting traffic and replacing the bridge was cost prohibitive. Region Director Tell said he would look into it.

Council President Wilson referred to the TPR and said what is often lost in the discussion is that simply allowing density does not always actually create it. He understands that downtown Portland has the freedom to raise their density. He said Areas 63 and 64 are planned for moderate high density and asked if ODOT got a chance to comment on Washington County's plan. He said, "We object to it on the grounds that it would impact Highway 99 and Scholls Ferry Road through Tigard...Density isn't the issue so much as it is patterns of development." He said if we put all that housing on the fringes, it impacts the ODOT facilities even more than if it was spread around into areas such as the Tigard Triangle, which are well served by transportation investments. Region 1 Manager Tell said there has been much feedback on the TPR and agreed that while the intention of the TPR is good, the implementation and impacts need to be fine-tuned. He said he hoped there would be some clarification or flexibility of the rules coming out of the discussions on the TPR. He expected new direction coming out next spring or summer.

Councilor Buehner suggested that Mr. Tell advocate for a reallocation of funding due to recent census changes so ODOT Region 1 gets their fair share.

Streets and Transportation Senior Project Engineer McCarthy thanked Region Director Tell, Area Manager Kim, and the ODOT staff for being easy to work with and solution-oriented.

City Manager Prosser clarified that Region Director Tell will get feedback from ODOT staff on the Guiding Principles and e-mail it to him so a final document can be prepared.

6. COUNCIL LIAISON REPORTS – None

7. NON AGENDA ITEMS - Assistant City Manager Newton discussed the draft RFP for city attorney services. She distributed a memo outlining the City's RFP process and schedule. She said staff proposed more than one RFP be issued: one for the regular city attorney and others for specialists such as labor or real estate attorneys. The regular city attorney reports to Council and the specialists report to the City Manager. She distributed to Council the draft RFP to be issued on December 13, 2010. Responses are due by January 11, 2011. Interviews could be scheduled for the week of January 30th (no Council meeting that week).

Assistant City Manager Newton asked Council to give feedback to her by November 23 on the city attorney's scope of work or the RFP schedule. She said Council will be involved in the City Attorney interviews. Mayor Dirksen asked if Council should have a representative on the specialized services attorney interview panel. Councilor Buehner said she wrote a memo to the City Manager suggesting that the City hire a real estate expert and that she would like to be involved with the selection of that particular specialist. City Manager Prosser asked Council what staff they would like

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to see involved. Mayor Dirksen suggested the City Manager and Finance and Information Services Director.

City Manager Prosser announced there will be a reception honoring Councilor Webb on December 28, 2010. The public is invited.

8. EXECUTIVE SESSION: None held

9. ADJOURNMENT

At 8:32 PM Councilor Buehner moved for adjournment and Council President Wilson seconded the motion. All voted in favor and the meeting was adjourned.

	Yes	No
Councilor Henderson	X	
Councilor Webb	Absent	
Council President Wilson	X	
Councilor Buehner	X	
Mayor Dirksen	X	

 /s/ Carol A. Krager
Carol A. Krager, Deputy City Recorder

Attest:

 /s/ Craig Dirksen
Mayor, City of Tigard

Date: February 22, 2011

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